



THE TEXAS A&M UNIVERSITY SYSTEM
Office of General Counsel

September 6, 2012

Ms. Amanda Crawford, Chief
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for a Decision regarding a Public Information Request from Brandon Wieber to the Texas Engineering Experiment Station (TEES 12-018) Correspondence ID 470011

Dear Ms. Crawford:

On August 30, 2012, we submitted a request for a decision regarding a public information request received August 16, 2012 by the Texas A&M Engineering Experiment Station (TEES), a component agency of The Texas A&M University System. The request, which is enclosed as Exhibit A, is from Brandon Wieber. Mr. Wieber seeks the following information:

1. any requests for proposals, proposals submitted by vendors, contracts, budgets or cost allocations for the purchase and/or use of aerial drones, UAs, UAVs, and UASs (hereinafter "drones"), as well as research services or other services related to drones;
2. any policies, guidelines, manuals and/or instructions on use of drones, including on the legal process required (such as a warrant or court order), if any, before operating a drone;
3. any records concerning this organization's use of drones now or plans to use drones in the future including:
 - a. the types of investigations or instances in which this university is using or plans to use drones, or how it plans to support, manage or oversee the usage of drones by another university or office;
 - b. policies, guidelines, manuals and/or instructions on storage requirements or procedures for video or static images obtained through use of drones, including retention times;
 - c. the altitude at which drones can or do fly;
 - d. drones' ability to carry weapons.

When we sent our initial request for a decision, TEES was in the process of gathering and reviewing information responsive to Mr. Wieber's request. At that time we cited multiple sections of the Texas Public Information Act, Government Code, Chapter 552 (the Act), as potentially applicable to the requested records. Having subsequently reviewed the responsive records, we now submit that certain portions of these records are excepted from disclosure as marked under section 552.101 of the Texas Public Information Act, Chapter 552, Government code ("Act"), in conjunction with section

51.914 of the Education Code. We have enclosed as Exhibit B representative samples of records relating to TEES services related to drones.

Section 552.101. Exception: Information Confidential by Law

We believe Section 552.101 of the Act, in conjunction with section 51.914 of the Texas Education Code, excepts from disclosure the representative sample highlighted and marked in Exhibit B. Section 552.101 provides that information is confidential and excepted from disclosure if it is information considered to be confidential by law, either constitutional, statutory or by judicial decision. Section 51.914 of the Education Code states in relevant part:

(a) In order to protect the actual or potential value, the following information is confidential and is not subject to disclosure under Chapter 552, Government Code, or otherwise:

(1) all information relating to a product, device, or process, the application or use of such a product, device, or process, and all technological and scientific information (including computer programs) developed in whole or in part at a state institution of higher education, regardless of whether patentable or capable of being registered under copyright or trademark laws, that have a potential for being sold, traded, or licensed for a fee;

(2) any information relating to a product, device, or process, the application or use of such product, device, or process, and any technological and scientific information (including computer programs) that is the proprietary information of a person, partnership, corporation, or federal agency that has been disclosed to an institution of higher education solely for the purposes of a written research contract or grant that contains a provision prohibiting the institution of higher education from disclosing such proprietary information to third persons or parties;

TEX. EDUC. CODE ANN. § 51.914 (a) (Vernon Supp. 2011).

We believe section 51.914(a)(2) is applicable to the portions of the requested records as noted. This information relates to products developed in whole or in part by various third parties that have been disclosed to an institution of higher education solely for the purposes of a written research contract or grant that contains a provision prohibiting the institution of higher education from disclosing such proprietary information to third persons or parties. For instance, the requested records include agreements between TEES and private entities. The marked information details research being conducted by TEES involving products that are proprietary to these entities. These records reveal information pertaining to TEES' research strategy for these products with the noted sponsor, including specific details of planned research such as potential locations for the research, items of interest for the research, research methods, and related commercialization. Moreover, the agreements prohibit TEES from disclosing information that is proprietary to outside parties except in limited circumstances. This information has been maintained by TEES in accordance with the agreements.

Section 552.110: Confidentiality of Trade Secrets and Commercial or Financial Information.

Additionally, we believe the records may include information that is proprietary and confidential to Vanguard Defense Industries, L.L.C. Consequently, all or part of such information as marked may be subject to exception from disclosure under section 552.110 of the Act. Accordingly, we are requesting a decision regarding these records as marked.

Regarding the application of Section 552.110 to these records, we note that the Act provides:

- (a) In a case in which information is requested under this chapter and a person's privacy or property interests may be involved, including a case under section 552.101, 552.104, 552.110 or 552.114, a governmental body may decline to release the information for the purpose of requesting an attorney general decision.
- (b) a person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general that person's reasons why the information should be withheld or released.
- (c) the governmental body may, but is not required to, submit its reasons why the information should be withheld or released.
- (d) if release of a person's proprietary information may be subject to exception under Section 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision. Notice under this subsection must:
 - (1) be in writing and sent within a reasonable time not later than the 10th business day after the date the governmental body receives the request for the information; and
 - (2) include:
 - (A) a copy of the written request for the information, if any, received by the governmental body; and
 - (B) a statement, in the form prescribed by the attorney general, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:
 - (i) each reason the person has as to why the information should be withheld; and
 - (ii) a letter, memorandum, or brief in support of that reason.
- (e) A person who submits a letter, memorandum, or brief to the attorney general under Subsection (d) shall send a copy of that letter, memorandum, or brief to the person who requested the information from the governmental body. If the letter, memorandum, or brief submitted to the attorney general contains the substance of the information requested, the copy of the letter, memorandum, or brief may be a redacted copy.

Records that are clearly public will be provided to Mr. Wieber. However, TEES is declining to release potential proprietary information pending a decision from your office. We are sending the letter prescribed by the attorney general to Vanguard as notice of its right to object to the release of materials containing proprietary information. A copy of this letter is enclosed as Exhibit C. TEES takes no position regarding the application of section 552.110 to the information and declines to submit reasons why all or part of the requested information should or should not be considered proprietary under this section.

Thank you for your consideration of this matter. If you have any questions or need further information, please feel free to contact me.

Sincerely,



R. Brooks Moore
Managing Counsel, Governance

Enclosures

cc: Brandon Wieber
1748-37128337@requests.muckrock.com

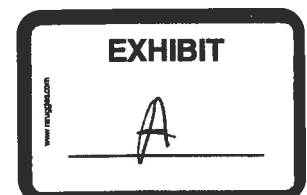
Pamela Green

On 8/16/12 1:19 PM, "<1748-37128337@requests.muckrock.com>"
<1748-37128337@requests.muckrock.com> wrote:

>August 16, 2012
>Texas A & M Engineering Experiment Station

To Whom It May Concern:

>
>Pursuant to the Texas Public Information Act , I hereby request the
>following records:
>
>1. any requests for proposals, proposals submitted by vendors, contracts,
>budgets or cost allocations for the purchase and/or use of aerial drones,
>UAs, UAVs, and UASs (hereinafter ³drones²), as well as research services
>or other services related to drones;
>
>2. any policies, guidelines, manuals and/or instructions on use of
>drones, including on the legal process required (such as a warrant or
>court order), if any, before operating a drone;
>
>3. any records concerning this organization's use of drones now or plans
>to use drones in the future including:
>
>a. the types of investigations or instances in which this university is
>using or plans to use drones, or how it plans to support, manage or
>oversee the usage of drones by another university or office;
>
>b. policies, guidelines, manuals and/or instructions on storage
>requirements or procedures for video or static images obtained through
>use of drones, including retention times;
>
>c. the altitude at which drones can or do fly;
>
>d. drones¹ ability to carry weapons.
>
>I also request that, if appropriate, fees be waived as I believe this
>request is in the public interest. The requested documents will be made
>available to the general public free of charge as part of the public
>information service at MuckRock.com, processed by a representative of the
>news media/press and is made in the process of news gathering and not for
>commercial usage.
>
>In the event that fees cannot be waived, I would be grateful if you would
>inform me of the total charges in advance of fulfilling my request. I
>would prefer the request filled electronically, by e-mail attachment if



>available or CD-ROM if not.

>

>Thank you in advance for your anticipated cooperation in this matter. I

>look forward to receiving your response to this request within 10

>business days, as the statute requires.

>

>Sincerely,

>Brandon Wieber

>Filed via MuckRock.com

>E-mail (Preferred): 1748-37128337@requests.muckrock.com

>

>For mailed responses, please address (see note):

>MuckRock News

>DEPT MR 1748

>PO Box 55819

>Boston, MA 02205-5819



THE TEXAS A&M UNIVERSITY SYSTEM
Office of General Counsel

September 6, 2012

Michael Buscher
Vanguard Defense Industries
2455 FM 2920, Suite A
Spring, TX 77388

RE: Notice Statement to Persons Whose Proprietary Information is Requested

Dear Mr. Buscher:

The Texas A&M Engineering Experiment Station received a formal public information request to inspect or copy some of its records. A copy of this request is enclosed along with a copy of our correspondence to the Texas Attorney General advising that the requested records include information we received from you or from your company that may be proprietary and confidential.

The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires us to release your records. Generally, the Texas Public Information Act (the Act) requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the attorney general that one or more exceptions apply to your records. You are not required to submit arguments to the attorney general, but if you decide not to submit arguments, the Office of the Attorney General will presume that you have no interest in withholding your records from disclosure. In other words, if you fail to take timely action, the attorney general will more than likely rule that your records must be released to the public. **If you decide to submit arguments, you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the attorney general, you must:

- a) identify the legal exceptions that apply,
- b) identify the specific parts of each document covered by each exception, and
- c) explain why each exception applies. Tex. Gov't Code § 552.305(d) (2010).

A claim that an exception applies without further explanation will not suffice. Attorney General Opinion H-436. You may contact this office to review the information at issue in order to make your arguments. We will provide the attorney general with a copy of the request for information and a copy of the requested information, along with other material required by the Act. The attorney general is generally required to issue a decision within 45 business days.

Please send your written comments to the Office of the Attorney General at the following address:

EXHIBIT

C

**Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548**

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. Tex. Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Tex. Gov't Code §552.305(e).

Commonly Raised Exceptions

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly-claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

Section 552.101: Information Made Confidential by Law

Open Records Decision No. 652 (1997).

Section 552.110: Trade Secrets and Commercial or Financial Information

Trade Secrets:

In re Bass, 113 S.W.3d 735 (Tex. 2003).

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).
Open Records Decision No. 552 (1990).

Commercial or Financial Information:

Birnbaum v. Alliance of Am. Insurers, 994 S.W.2d 766 (Tex. App.--Austin 1999, pet. filed) (construing previous version of section 552.110), *abrogated by In re Bass*, 113 S.W.3d 735 (Tex. 2003).

Nat'l Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974).

Open Records Decision No. 639 (1996).

Section 552.113: Geological or Geophysical Information

Open Records Decision No. 627 (1994).

Section 552.131: Economic Development Negotiation Information

If you have questions about this notice or release of information under the Act, please refer to the Public Information Handbook published by the Office of the Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-

Mr. Michael Buscher
September 6, 2012
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6839 (877-OPEN TEX). For copies of the Public Information Handbook or Attorney General Opinions, including those listed above, visit <http://www.texasattorneygeneral.gov> , the attorney general's website, or call the attorney general's Opinions Library at (512) 936-1730.

Sincerely,



R. Brooks Moore
Managing Counsel, Governance

Enclosures

Cc: Brandon Wieber
MuckRock News
DEPT MR 1748
PO Box 55819
Boston, MA 02205-5819

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Pamela Green